

[Abdul Latif Farookhi Sahib Bahadur] [17th December 1947]

Muthawalli to keep a true and faithful account of such receipts and disbursements, yet they do not provide for a proper machinery to enforce the duties cast on the Muthawallis. It may be said, without fear of contradiction, that in many cases, wakfs property has unfortunately come to be treated as alienable and heritable private property of the Muthawalli.

"The Bill seeks to remedy these defects by the establishment of a Board which is to be an elected one representing all kinds of interests. The Bill provides for the requisition of wakfs (section 32). Every Muthawalli is obliged to submit audited statement of accounts of the wakfs in his charge to the Board for scrutiny (section 36) and all sums found to be due, on any account whatever are made recoverable as a public demand (section 39). Even the wakf-al-aulad is brought under the supervision of the Board though not in the manner as a public wakf. The Board is authorized to remove and appoint Muthawallis (sections 61 and 29). The Durghas and makbiras as defined in the Bill brought under the supervision and control of the Board (sections 46 and 47). The Act seeks to create a wakf fund (section 49) which may be applied, amongst other things, for the maintenance of schools, hospitals, rest-houses, etc. (section 50). The Board in its turn is subject to the supervision of the Local Government sections 52 to 54). Procedure in respect of Judicial proceedings is provided for in sections 56 to 64.

"The Bill does not, however, interfere with the succession of Muthawallis except in the case of the Prince of Arcot's Endowments. The Prince of Arcot Endowments have, ever since the passing of Madras Act II of 1923, been governed by the said Act. This 1923 Act which shuts out the jurisdiction of Courts and bars all suits against the Muthawalli is rightly sought to be repealed. These endowments having been created by the Nawabs in their capacities as Nawabs, no one child has superior claims to the management thereof. In the circumstances the management of these wakfs is sought to be vested in a representative body as provided for in section 76. The Act contains special provisions in respect of the Prince of Arcot's Endowments in sections 76 to 80."

THE HON. DR. T. S. S. RAJAN :—"The Government have no objection."

The motion for leave to introduce was put and carried.

B. RESOLUTIONS.

(1) CONSIDERATION OF THE DRAFT INDIAN CONSTITUTION BILL BY THE PROVINCIAL LEGISLATURE—cont.

*DR. V. K. JOHN :—"Mr. President, Sir, Dr. Lakshmanaswami Mudaliyar commended the resolution in an eloquent and effective speech. He regretted that a nominated member had to move the resolution. I should like to mention that there is no difference at all from a constitutional point of view between an elected member and a nominated member. The only way of getting into the Council is by either election or nomination. All

17th December 1947] [Dr. V. K. John]

of us represent the general public. It may be that some have voted against me and some in my favour. It does not mean that I represent only those who voted for me. It does not also mean that I represent only the Indian Christians. I represent everybody."

MR. PRESIDENT:—"The hon. Member need not labour that point."

DR. V. K. JOHN:—"He made a long speech in which he cast some reflection on the non-official members in not having moved such a resolution. Therefore, it is, that I say, that there is no difference between an elected and a nominated member from a constitutional point of view. Dr. Lakshmanaswami Mudaliyar, though a nominated member is an ornament to this Council, I want him to know the correct constitutional position, Sir. I do not support the resolution.

"Dr. Lakshmanaswami's speech went far beyond the scope of the resolution. He wanted that the constitution-making should be postponed till the country settled down. He also said that it should be delayed for two years, so that public opinion might be gathered on the merits of the various provisions in the Bill. I do not at all agree with him. If you analyse the resolution, you find that Dr. Lakshmanaswami Mudaliyar wants this House, the other House, and all the other provincial legislatures to have an opportunity to express their views. The expression of opinion of this House can only be in the form of a resolution. Otherwise, it will only be expressions of individual opinion by various members constituting this House. No law prevents us from moving any resolution. Any member can move a resolution either supporting or opposing the draft Constitution Bill or suggesting amendments to it. As a matter of fact, no resolution on this subject has yet been brought forward. So, it is open to any member of the House to move a resolution on an important matter concerning the constitution of this country. The resolution also says that constitution-making must wait till we express our opinion, and that a date may be fixed. In my opinion, there should not at all be any delay in passing this Constitution Bill. According to me, there are only two very important matters concerning the framing of a constitution for this country. The first is that we must have a strong Central Government. If this country is to take its rightful place among the nations of the world as a strong power or as the strongest power in Asia, if this country is to ward off aggression, if this country is to put down civil commotion and to successfully set itself against separatist tendencies, we must have a strong, powerful Centre. The division of the country has enabled us to have a very strong and powerful Centre. Dr. Lakshmanaswami Mudaliyar doubted the wisdom of having a strong Centre and weak provinces. A strong Centre does not mean a weak province. Therefore, in my opinion, the one essential condition in constitution-making must be to see that there is a very strong and powerful Centre.

"The next thing, Sir, with regard to the making of the constitution, which I suggest as a student of Constitutional Law,

[Dr. V. K. John]

[17th December 1947]

is that any constitution that is to be framed, ought to have two characteristics, namely, certainty and flexibility. A living law must have these two characteristics. If any constitution is to serve the present generation and also the future generation, it ought to possess the characteristics of certainty and flexibility and I am sure that this principle will be borne in mind by those who are shaping the constitution of this country.

"Sir, Dr. A. Lakshmanaswami Mudaliyar suggested that our opinion should be elicited first before the constitution is finally adopted. He perhaps ignores the fact that our representatives are also sitting in the Constituent Assembly and of which we are proud."

MR. PRESIDENT :—"No representative from this House."

DR. V. K. JOHN :—"Perhaps, no representatives directly from this House, Sir. But as a matter of fact, any resolution that is passed by the Congress High Command will certainly pass through this House, and through the other House as well. Therefore, any resolution which is against the wishes of the Congress High Command and which they would not approve will not go through this House. Therefore, there is no point in urging that the opinion of this House should prevail on the constitution-making body. Anyhow, Sir, we have got very eminent jurists from Madras in the Constituent Assembly, who are taking part in the shaping of the constitution and we are legitimately proud of the part played by Mr. Gopalaswami Ayyangar and Mr. Alladi Krishnaswami Ayyar. I think we can trust our representatives from the South to express our opinion in the drafting of the constitution. Therefore, Sir, to say that the framing of the constitution must be adjourned *sine die* or postponed for two years or more, is in my opinion, not in the interests of the country as a whole. I think that we should trust the people now engaged in the framing of the constitution, but nothing prevents us from passing a resolution on any matter, on which we should like to draw their attention.

"Sir, as a matter of fact, every point urged by Dr. A. Lakshmanaswami Mudaliyar, the mover of this Resolution, has been urged on the Constituent Assembly by the members present there, and in fact when I listened to his speech the other day and compared it to that of a Member of the Constituent Assembly I thought that they were voicing forth exactly the same point of view. Every point of view has been expressed. Therefore, I think we should not be a party to any delay in the shaping of a constitution for India, the essential requisite of which is to have a stable and strong Government for our country. I, therefore, oppose this resolution. Sir."

* SRI B. BHIMA RAO :—"Mr. President, I join in the sentiments expressed by my hon. Friend Dr. V. K. John. No doubt, the resolution of Dr. Sir A. Lakshmanaswami Mudaliyar is well-intentioned, but our immediate objective is to have a full-fledged constitution for the Dominion of India and other things can certainly wait. As stated by Dr. John, we have got the best

17th December 1947] [Sri B. Bhima Rao]

brains and intellects of our country gathered in Delhi, who are hammering out this constitution. We have got the noblest sons of India assembled there and all sections of opinion are also represented. So far as this Province is concerned, we have sent the best people as our representatives and people belonging to all sections of political opinion in this Province have also been sent there. The Congress is represented, independent opinion is represented by Sri Ailadi Krishnaswami Ayyar and by Sri N. Gopalaswami Ayyangar and others, and the ex-Justice Party opinion is represented in the person of Sir R. K. Shanmukham Chettiar. (Interruption.) Sir, I do not want to enter into any discussion on this subject, as to what party Sir R. K. Shanmukham Chettiar represents, but all I wish to state is that all public and political opinions prevailing in this Province and represented in the Constituent Assembly and I daresay that every section of political opinion has received the hearing of those in charge of the framing of the constitution and their opinion will surely be considered by them, and the constitution that will be framed will be a model constitution for the Province to adopt. I do not think that there will be anybody in this House or outside who will take exception to the model constitution that will be framed by the Constituent Assembly.

“Well Sir, if the procedure which my hon. Friend Dr. Sir A. Lakshmanaswami Mudaliyar suggests in his resolution is to be adopted, it will very much delay the framing of the constitution. It is a very dilatory procedure and it will take a long time before the Constituent Assembly could obtain the views of the various Legislatures. There are some Provinces where there are bi-cameral legislatures and if the opinions of both Houses are to be obtained, it will mean delay. Even in this House, there are different points of view that have been expressed on several occasions and it is impossible to obtain a unanimous opinion on any single question. So, discussions will take place for a number of days without reaching an ultimate unanimous opinion. Different Provinces may express different opinions on a particular point—and there may be local differences within a Province itself—and supposing all these different points of view are to be placed before the Constituent Assembly, I wonder how the Constituent Assembly or the Constitution-making body could consider these divergent opinions and come to an agreement with regard to the nature of the constitution that is to be framed for the Provinces or for the country as a whole. I think, Sir, there will be more confusion if such a method as propounded by my hon. Friend is adopted and as I said at the beginning, our immediate objective is to have a constitution framed for the whole of the country and for the Provinces at the earliest possible moment. Afterwards, if there is any lacuna or defect in that constitution, which will easily be found out in the actual working of it, then we can have it rectified later on. I think, Sir, that the resolution moved by my hon. Friend Dr. Sir A. Lakshmanaswami Mudaliyar is not conducive to the best interests of India and in

[Sri B. Bhima Rao] [17th December 1947]

order that we may have peace and contentment in our country, it is absolutely necessary that the constitution must be proceeded with and enacted as soon as possible."

* SRI C. N. MUTHURANGA MUDALIYAR :—" Mr. President, Sir, I rise to oppose this resolution. Unfortunately, I was not present in this House, when this resolution was moved to hear the speech of the hon. Dr. Sir A. Lakshmanaswami Mudaliyar. However, the resolution is sufficiently expressive and I oppose this resolution for the same reason that my hon. Friend Dr. V. K. John has opposed it. Already the Constituent Assembly has been adjourned and the drafting of the constitution has been postponed till the next sitting of the Assembly in April. Let us not add to the delay by passing a resolution of this kind. The drafting of the constitution is a most urgent matter and it has already been delayed on account of the various incidents and situations that have taken place in North India from time to time. It cannot be delayed any longer and let us not add to that delay by asking that the draft Constitution Bill may be sent to Provincial Legislatures for expressing their opinions on it. It is no doubt true that Provincial Legislatures must discuss it, and both Houses in the Provinces wherever there are bi-cameral legislatures will have to consider it; but it will take a very long time for us to send our opinions to the Constituent Assembly.

" Moreover, Sir, I should like to remind the House, that we in this House have no right to send a representative to the Constituent Assembly. We cannot even record a note to any member of the Constituent Assembly. That is the constitution of our House. Then why should we claim a right to express our opinion on the draft constitution for the country?

" Sir, I have my grievances also with regard to the drafting of this constitution. I have always held that the Provincial Legislatures must be single-chamber legislatures. There is no need to have bi-cameral legislatures in the Provinces. Unfortunately, some representatives from Madras,—I understand from the papers, although no doubt we cannot place much reliance on news appearing in newspapers,—have expressed their views before the Constituent Assembly, that there should be a double-chamber legislature in this Province."

MR. PRESIDENT :—" I am sure you would like to express that opinion at least."

SRI C. N. MUTHURANGA MUDALIYAR :—" Sir, my opinion is that the Madras Legislature must be only a single-chamber legislature. There is no need for us to have a bi-cameral legislature. Bi-lingual legislatures will come when the Province is divided into linguistic Provinces. Sir, we can express our opinion on that point in discussing this resolution. We can very well say that we members of the Madras Legislative Council, have no desire to have a double-chamber legislature in this Province, and we can communicate this to the Constituent Assembly and

17th December 1947] [Sri C. N. Muthuranga Mudaliyar]

if inspite of that, the Constituent Assembly should draft a constitution providing for a double-chamber for Madras, then, as my hon. Friend from Bellary just now said, we can have these lacunae amended or modified at a future date. Nothing will be lost thereby. The urgent matter now is that we should have a constitution immediately brought into force. We are now functioning under the Government of India Act, 1935. Let us not function for a very long time under that Act. Let us have our own Constitution Act and let us function as a legislature under a free constitution, as passed by the Constituent Assembly. As Dr. V. K. John has expressed, I wish also to express that the Centre must be a strong Government. There must be a strong Central Government and the existence of such a strong Central Government is not in any way derogatory to a free Provincial Government. Of course we may desire to be a free Provincial Government; but our freedom will be governed by a strong Central Government also, and we must agree to it. No doubt our friends the Dravidistanites and the Moplahstanites, may make a grouse against me when I say that there ought to be a strong Central Government, but in any case, there must be, as I said, a strong Central Government. We have seen during the period of the Interim Government, what a weak Central Government can do, how they were not able to do anything in the face of danger. So, there is every need for a strong Central Government to be set up and there is also need that the constitution must become law at an early date, and that it must replace the existing Government of India Act of 1935. Sir, I oppose this resolution."

12
noon.

SRI B. NARAYANASWAMI NAYUDU :—" Mr. President, Sir, my point is this: it is not a question of drafting the constitution; the real question is, what are the powers that the Provincial Government should have and what are the powers that the Central Government should have. Take, for example, the question of finance. I ask, do you want the income-tax to go to you, a portion of it at least, or do you want the entire thing to go to Sri N. Gopalaswami Ayyangar? (Interruption.) My friend was referring to the framers of the constitution, Sri Alladi, Sri Gopalaswami Ayyangar and others, who are all forging the constitution now at Delhi. That is why I refer to them. I say, the real question is, how far are we entitled to the income-tax, what is our share and how much of it will go to the Central Government. It is not a question of drafting; they are going to draft the constitution according as you dictate; and what is it that you dictate to them? What is that you want them to draft, and what are the powers of taxation that you want to have? Will the General Sales Tax continue to be with you, or will it go to the Central Government hereafter? Are you prepared to surrender all your sales tax revenues to the Central Government, and are you prepared to take a portion of the Army budget? All these things must be settled; therefore I say the question is not only of drafting, but it is a question as to whom such and such a tax should belong, and how are these taxes to be built up for the Central Government and for the Provincial Government. You

[Sri B. Narayanaswami Nayudu] [17th December 1947]

know where the finances come from and what kind of constitution is being framed now. That is why I ask the plain question whether you have considered all these various points. Have you thought over it; have you fought for the allocation of particular taxes to the Provinces in order to make them progressive and developing? I find it is only agricultural revenues that are to be left with you to be dealt with as you like. First of all, constitution-making started with three things, viz., foreign affairs, defence and communications all over the country, and also the finances to be raised which may be necessary for those purposes. But afterwards there has been a withdrawal from that position and they said: 'No, we are going to go further than these three things.' So far as the Indian States are concerned, they surrender only their powers with regard to these three subjects. So, with regard to the Provincial Legislature, do you want to go further than the Indian States themselves and surrender all your powers of finance, all your nation-building theories and even trade and commerce to the Central Government and be shackled by them? Are you going to be independent units of the Federation subject to the three main subjects I have mentioned or are you going to be saddled with foreign policy, the army, the navy and the air force? These things of course are Central subjects, there is no doubt or question about it and nobody also disputes it. But the real question is, what about the other subjects such as trade and commerce? Agricultural income alone is going to be left to the Provincial Government—that is my information. That is, if true, a very serious thing and you must say whether you are going to be parties to the surrendering of your powers. What are you going to do? Are you going to have empty boxes here? Have you given your representatives on the Central Government or on the Constituent Assembly a mandate that you will not surrender any of your present revenue sources? I know there is not much use my speaking in this House; we know what this Government will do; it will go on in its own way; it is the tail of a head which is at Delhi, and this tail is not a rebellious tail either—it is a tail which cannot do anything in connexion with the N.G.Os. strike—it is an 'adiyen' (அடியேன்) tail. I know that. But still I will be failing in my duty if I do not say now that it is not a question of drafting, that it is really a question of allocation of finances between the Central and Provincial Governments—of what your powers are going to be with regard to the trade and commerce of this Province? When we are dealing with such a vital problem, there is no use sitting quiet. There is a Central Act now which says that the Central subjects are foreign affairs, communications and defence, and the finances relating to them. These are Central subjects, and nobody disputes it. That is also what the Indian States have agreed to surrender and they retain all the other powers. Why should we go further than the Indian States and cede to the Central Government powers which it does not get from the States. If you want to say 'yes' to my question, then support the resolution; but if you want to be an 'adiyen' (அடியேன்) then nobody can help."

CONSIDERATION OF THE DRAFT INDIAN CONSTITUTION BILL 215
BY THE PROVINCIAL LEGISLATURE

17th December 1947]

MR. PRESIDENT:—"Do you want to make any motion now, Dr. Rajan?"

THE HON. DR. T. S. S. RAJAN:—"Not now, Sir, since the subject-matter of the resolution is being discussed."

MR. PRESIDENT:—"Afterwards, you cannot interrupt a speech."

THE HON. DR. T. S. S. RAJAN:—"I shall do so after this subject is disposed of."

MR. PRESIDENT:—"I see your proposed motion is about the resolution on the agenda."

* SRI N. RANGA REDDI:—"Mr. President, Sir, I beg to oppose this resolution moved by Dr. Lakshmanaswami Mudaliyar. I regret so many speeches have been made on this resolution, when, as my hon. friend Mr. Muthuranga Mudaliyar said, the resolution itself is sufficiently expressive and no reasons need be advanced for understanding this resolution. The purpose of this resolution is to say that in framing a constitution for the Indian Union by the Constituent Assembly, the Provincial Legislature, i.e., the Legislative Assembly and the Legislative Council, should be consulted before the final constitution is settled. I submit, Sir, that the representatives who have been elected by the Members of the Provincial Legislature to the Constituent Assembly are sufficiently competent to put forward our points of view in the framing of a constitution for the whole of India. The only objection perhaps that can be put forward is, as mentioned by one hon. Member, that this House did not have the benefit of sending any representative, rather in electing anybody; but I submit that though this Council was not a part of the electorate, members belonging to this House have been elected and are now sitting in the Constituent Assembly. I beg to submit that people with ripe experience of the working of various constitutions have been sent to the Constituent Assembly which is to frame the Indian constitution. It may be that some people who are really competent to sit on that Assembly have not been elected. I am not flattering when I say that Sir Lakshmanaswami Mudaliyar of course would have been one of the best persons to represent the Madras Province on the Constituent Assembly. But I may submit it is the defect of the system of election itself. In politics, it is not always the best, it is only the next best that we have; we have not been able to send all the best persons to the Constituent Assembly; nor has the Madras Province been able to send all the best persons even to this Provincial Assembly or even this Legislative Council. Therefore, I beg to submit that if all the best persons have not been sent, it is not the fault of the people but it is the fault of the system by which the elections have been made.

"The next point I would like to submit is; after all, in framing a constitution it is a moot point whether a big assembly can frame a good constitution. I have my own doubts, and I am one

[Sri N. Ranga Reddi] [17th December 1947]

of those who believe that constitutions can be framed only by a few persons who have got actual experience of constitution-making, and who have studied the constitutions of the world. In the present case, I am inclined to think that even in the Constituent Assembly, committees have been formed and it is they who frame the constitution; and when the whole constitution has been framed, that will be brought forward before the full Constituent Assembly for approval. Therefore, the fact that we have not been allowed to express our opinion with regard to the framing of the constitution need not be taken as a point against a good constitution being framed by the Constituent Assembly.

My next point is this: It may be that people who have got much experience of the working of the provincial constitutions may be able to suggest the insertion of some suitable provisions for the working of the Provinces in a smooth manner. On that point, I submit that so far as written constitutions are concerned, whatever be the constitution that is framed, it cannot be considered to be the best constitution. There will always be some flaw in such constitutions; it is only in the case of unwritten constitutions, that there will be some flexibility and we can work such constitutions with the best will with a sort of agreement on both sides—written constitutions are best suited for functioning. Therefore, the argument that probably the best constitution cannot be framed without the aid of the local Legislature is not of much importance. As pointed out by Sri Bheema Rao, if there is a flaw, it can be remedied. After all, human ingenuity cannot go so far as to provide for all contingencies; there will always be some defect or other; and wherever there is a defect, it can be removed by an alteration or by suitable amendments to the constitution.

“ My friend Mr. Narayanaswami Nayudu went into the question of the allocation of revenues between the Central and Provincial Governments. I do not know whether that point is strictly relevant to the subject under discussion. The resolution only says that we should be consulted with regard to the framing of the constitution and that as the Constitution Bill has been prepared, it ought to be sent to this Legislature for its opinion. That is the resolution under discussion. My hon. Friend says ‘the real point for discussion is only the allocation of revenues between the Central and Provincial Governments.’ It may be, Sir, one of the important points to be considered in the framing of the constitution—what revenues a Province should have and what revenues the Central Government should have. That is altogether beside the point now; that will come up only during the actual framing of the constitution, and it is not relevant to the point under discussion now.

12-15 p.m. “ Of course, Sir, I quite agree with my hon. Friend Mr. V. K. John that while framing a constitution, we should see that there is a strong Centre. At the time when elections were held to the Constituent Assembly, members of this House are probably aware that India was not divided; it was one undivided India and Mussalmans also sent their own representatives to the Constituent

17th December 1947] [Sri N. Ranga Reddi]

Assembly to put forth their views in the discussions of the Constituent Assembly. But, subsequently India was divided. Sir, at the time when India was one, people felt that there should not be a strong Centre; probably in order to pacify the Muslims at that time, people were anxious that there should not be a strong Centre. Now that Pakistan has come into being and Muslims are separated, there is no possible objection to having a strong Centre. It is only a strong Centre that can solve all the difficulties and problems with which India is faced. I therefore oppose the resolution brought forward by the hon. Dr. Lakshmanaswami Mudaliyar and I also support Mr. Muthuranga Mudaliyar."

(The Hon. Dr. T. S. S. Rajan stood up to speak.)

MR. PRESIDENT :—" I thought I must allow the hon. Dr. Lakshmanaswami Mudaliyar."

DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—" I have got the right of reply."

THE HON. DR. T. S. S. RAJAN :—" I have got to reply also."

DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—" But, I have got the last voice."

* SRI M. NARAYANA MENON :—" I oppose this resolution, Sir. The main reasons are these: Firstly, the Constituent Assembly is an Assembly of the representatives of the people. It is not merely an Assembly of the representatives of the Legislature whether of the Assembly or the Council. In those circumstances, our constitution should be framed by the representatives of the people there. It is likely that the draft constitution will be published and when it is published, it is left to the individual members here and elsewhere, whether they are members of the Assembly or the Council or members of the public, to send up their criticisms through the press or by memoranda to the Constituent Assembly. Then all these things can be considered. If we adopt this resolution and make a demand to the Constituent Assembly that the draft constitution must be sent over to us for scrutiny, for discussion and for criticism, it means it will have to be sent up to all the Legislatures in the Indian Union to elicit criticism regarding the draft constitution. Sir, my submission is that it is a matter which will take up a long time and since we want a constitution as early as possible, such a course should not be adopted. We want a constitution as early as possible, because there are many things brewing in some places. It must be a strong Centre which must be able to deal with all matters. Unless it is done, it will be difficult for the Government to deal with them.

" Then, Sir, another important point which was suggested was regarding the distribution of powers between the Central and the Provincial Legislatures. I ask, is it fair as a body to make any demand on the Constituent Assembly to give us more powers than the other Provinces. The Constituent Assembly is now considering the powers that should be given to these Provincial Legislatures,

[Sri M. Narayana Menon] [17th December 1947]

and in considering that question, I am sure, it will certainly bear in mind the fact that the Provinces will hereafter become units of administration and require effective and sufficient powers. But, I would say that if more power is given to the Provinces than is necessary, the result will be that the powers of the Central Legislature will be very much reduced hereafter. As far as possible, we should recognize the necessity for a strong Centre. We have to recognize that if according to the proposal, the power of the Centre is reduced, then the difficulty will be greater than what we are experiencing now.

"Sir, another point which I wish to bring to the notice of the Council is this. Is it the function of these Provincial Legislatures to offer any advice, as a body—it may be on the powers that should vest in the Centre and in the Provinces—is this House competent to offer such opinion? It is not, because, some members may take some view and some others may take a different view and it is only on the result of the vote that a certain view will be communicated as the view of the members of this Council. That is not the correct method; every member's view will not be represented in that. On the draft Constitution, as it is, every member can give his own opinion and ultimately when the vote is taken, it may not be the view of all the members of this House and if you are sending up that view to the Constituent Assembly in order that it may be considered there, it will not truly reflect the view of the people of this Province. So, I think it is necessary to consider any such resolution here at all and I therefore oppose this resolution."

THE HON. DR. P. SUBBARAYAN :—"Mr. President, Sir, I can understand the necessity of my hon. Friend saying that the Provincial Legislatures should have a voice in the framing of the future constitution of this country. But, we must also face facts. Other federations have come into being. Various independent entities agree to come together and to form federations. Here, on the other hand, we have been accustomed to work under the Act of 1935, under what I would call a unitary form of Government: Only under the Act of 1935, it was put down that India should be a federation. Constituted as we are, considering the distances and the vastness of the country and the different developments in this country, naturally a federation was about to come; but, we are not writing on what I would call a clean slate. We are not writing a constitution in consonance with what has happened before. Therefore, I would like hon. Members to consider the fact that we are for becoming a federation by an Act passed by the Constituent Assembly, as it is constituted at the present time. Hon. Members also know as well as I do, that this Constituent Assembly is composed of representatives of every Province. It was considered at one time whether fresh elections could not be held to the Constituent Assembly from the various Provinces concerned. But, considering the complications that may arise from such elections, elections from the Provincial Assemblies had been held. Only recently, His

17th December 1947] [Dr. P. Subbarayan] •

Majesty's Government put forward the proposal of the Constituent Assembly and they thought that the representatives of the people would be properly represented in the Constituent Assembly if elections were held from the Assemblies of the various Provinces to which members were recently elected. This was accepted by both the political parties, the Congress and the Muslim League.

Another consideration was that the representatives of the Constituent Assembly should bear the same proportion of the different groups with regard to population as in each of the Provinces. Sir, there has been some complaint that this House was not represented in the Constituent Assembly. Considering that the Government wanted representatives of the people from the limited electorate, as it is constituted to-day, from the House which was recently elected, it was only proper that they should look to the Provincial Assemblies rather than to the Provincial Councils for representation in the Constituent Assembly. That did not preclude any of the members of the House from standing for election to the Constituent Assembly and I think the Assemblies of the various Provinces have been fair enough to send some of the members belonging to the Upper House to the Constituent Assembly in order to get in what I would call the necessary representation of elder statesmen in the deliberations of the Constituent Assembly. There was a time when people did think that the Provincial Assemblies might be given a chance of debating on the principles of the Constitution, but after consideration, it was felt that after all the Provincial Assemblies are represented by their members in the Constituent Assembly and each of those members coming from the Provinces know exactly what the Provinces want and thus the Provincial representation will be there with regard to the framing of the constitution.

“ My hon. Friend Mr. Narayanaswami Naidu, said that we are merely registering the decisions which are made by the High Command. I am afraid, Mr. Narayanaswami Naidu is very much mistaken. Within the ambit of the Congress Constitution, any Congress member representing a particular Province is entitled to put forward the views as obtaining in the Province, and I may assure hon. Members that members of this Province have not been behind in putting forward the views that are held in this Province. There are certain considerations which have got to be kept in mind in framing the constitution. That the Indian Union should be a federation is a thing that is granted, I am sure, by every member of this House. If you decide to be a federation, you will see by the working of federations in other countries, particularly in the United States, that though the federal power was limited by the Constitution, in the course of the working of that Constitution, the Centre has assumed to itself powers which were not thought of by the framers of the Constitution. The tendency in all federations has been for the Centre to get power more and more because modern Governments must be managed from a strong central authority. As they have to carry on with negotiations with other countries,

[Dr. P. Subbarayan] [17th December 1947]

naturally, the Centre must be armed with such power as would make the Central Government respected in all the other countries. I am sure hon. Members here realize that it is proper that our Central Government should be in a position to exercise powers in a manner as to earn the respect of other nations. You know, in the matter of population, which is about three hundred millions this country is next only to China in the matter of population and even after federation comes into force, this country will have greater political influence than China. We may be a very young country, but yet we get the respect of other nations because of the way our foreign relations have been dealt with by our great Prime Minister, Pandit Jawaharlal Nehru. To-day perhaps he stands as one of the biggest foreign Ministers anywhere in the world. I utter this without fear of contradiction. It is because of the circumstances that made it impossible for him to leave this country to attend the United Nations Organization that it had not been possible for India to take a path which she would have taken. If our Prime Minister had been able to go either to Lake Success or to Washington and if this power is to continue, I am sure hon. Members of this House will grant that the Centre must be vested with such powers as to earn the respect of all other countries. I do not for a moment quarrel with the learned Vice-Chancellor of the University of Madras in saying that the Provinces should possess such powers as to render every aid that is possible for the advancement of this Province and I am sure the framers of the Constitution will bear this in mind when the future constitution comes to be framed. In fact, because the financial resources of the Provinces are not what they ought to be, the President of the Constituent Assembly has constituted a Committee to evolve a principle by which the Provinces might be left with the right to raise taxes which will be sufficient for the growing needs of a Province and the Provincial Governments are asked to submit proposals to find out in what way the allocation of finances can be made between the Centre and the Provinces. So, hon. Members may rest assured that the framers of the Constitution are having in view the growing needs of the Provinces in the matter of finance. At the same time, there are subjects in which the Centre has got to be clothed with sufficient power. The problem is complicated because of the existence of States in this country. A number of States have acceded to the Indian Union and they have acceded only in the matter of the three main subjects put forward by the proposals of the Cabinet Mission of May 16th, but in the working of the Constitution, when the Constitution is finally passed into law, we may find that the Centre should be clothed with even more powers than it possesses to-day with regard to the States. And, as the people of the States come to exercise governmental administration more and more—witness what is happening both in Travancore and Mysore—we shall certainly settle down to a position where there will be no Provinces and States, because under the Constitution, they will all be Provinces of the Union of India, and except in the matter of governorships where the States might have hereditary Governors, we shall settle down

12-30
P.M.

17th December 1947] [Dr. P. Subbarayan]

in a manner as to bring about definitely the same relations as exist to-day between the Provinces and the Centre. That is bound to come, because, as I have said and as I explained in the beginning, as in the United States, as the constitution grows and gets into working order, conventions are bound to arise, which will clothe the Centre with more power than what is found in a written constitution. Of course, there is this difficulty, that a written constitution is contra-distinguished with what I would call, a British Constitution, which has no Statute at all. The British Constitution has grown by convention and practice, but even under a written constitution, within the constitution there may grow up conventions which, considering the circumstances which may arise, may clothe the Centre with more power than what is provided for under the Constitution as enacted. It is that I look forward to because I look forward to the day when India will play a very prominent part in the comity of nations. As I explained before our geographical situation; if you look at the map of the world, in such that you will find India almost occupies the centre of the world and as being in the centre of the world we will be in a position, provided our Government is strong—and we look forward to a time when orderly progress will be the order of the day and we shall be able through the United Nations Organization which I hope will grow strong in spite of the rumbling and the creaking we hear from Lake Success to-day to exercise that influence which would prevent perhaps the two catastrophies that have occurred within the course of a quarter of a century. In the lifetime of the present generation we have had two ghastly wars and it is this message which India has got to give to the world. We have always been known to be a peace-loving nation, guaranteeing peace all over the world and it is that mission India will undertake once she settles down under the new Constitution. Therefore, ultimately it is most important that this constitution should be enacted as soon as possible. The adaptation of the Government of India Act is no doubt there, but there are circumstances which make it impossible to go on under a constitution which was drafted, not by ourselves, but by some one else. When you have got a right to draw up a constitution and to get it into working order, I feel that speed is as important as anything else. You cannot say that we have speeded up this constitution, because it is now over a year since the Constituent Assembly met for the first time; the work of the Committees of the Constituent Assembly are not secret or confidential, or private; they are open: the reports of the Provincial Constitution Committee and the Union Powers Committee are all in the hands of the public and they know exactly how the Constitution is being framed. There is no need for the Houses of the Legislature in the Provinces to discuss this matter, as by influencing your own members in the Constituent Assembly, you could have amendments that you consider important considered by the Constituent Assembly. Do not for a moment run away with the idea, as my hon. Friend from Kistna wanted to make out, that members from this Province are bound hand and foot to some principle which

[Dr. P. Subbarayan] [17th December 1947]

will be laid down by some hidden hand. That is not the case. We have got enough independence to tell them what exactly this Province feels in the matter of framing the constitution. Therefore, there need be no fear that opinion crystalized in this Province, is going to be given the go-by in the Constituent Assembly. Keeping the main principle in hand, that we want a Government at the Centre which will earn the respect of people abroad, and keeping also in view that the Centre and the Provinces should be given powers to raise revenues in order to satisfy the growing needs of a modern State, you may be certain that the constitution as it finally emerges out of the Constituent Assembly will be such that not merely the framers of it, but even future constitution-makers would be proud of it. The Federalist is quoted very often as an example of Federal Constitution. I look forward to the day when the Indian Constitution might be quoted as an example as to how a Federation ought to work."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Mr. President, Sir, I really wonder why there should be such a lengthy discussion over this very simple resolution. Sir, what my hon. Friend, Dr. Lakshmanaswami Mudaliyar, wants to seek through this resolution is, to make a recommendation to the Constituent Assembly. Now, Sir, I ask whether such recommendations have not been made through this House in the past. With due respect to my hon. Friend, Mr. Narayana Menon, who said that we can, by means of memoranda submitted to the Constituent Assembly through our representatives, make suggestions to the Constituent Assembly, I should like to state that if that is the only way, I do not think this House was justified in passing the resolution for Linguistic Provinces and for the establishment of the Andhra Province. We rely upon that precedent. Now, Sir, my hon. Friend, Dr. Subbarayan, said that the members of this House were not precluded or debarred from becoming members of the Constituent Assembly; that chance was given to this House and that discretion was given to the members of the Assembly to elect members of this House to the Constituent Assembly. I say the members of this Council had not the special privilege of being elected to the Constituent Assembly. Of course, an ordinary man-in-the-street could have been elected to the Constituent Assembly. Therefore, it was not the special privilege that was conferred upon this House and if this House wants to give expression to its views as to what constitution should be framed or as to what has to be done with regard to the rights and privileges of the province, I do not think that any sane man can argue that it should not at all express any opinion in regard to the matter.

" Now, Sir, my Hon. Friend Dr. Subbarayan said that the Centre must be vested with such powers as to command the respect of the world. I do really want that the Centre must have that power and in order that the Centre may have such a power without exposing itself to the ridicule of the world, we wish that we should offer suggestions. We call ourselves a democratic State, but if the

17th December 1947] [Abdul Latif Farookhi Sahib Bahadur]

Centre, by some misfortune, wants to become a Fascist State, and they frame laws and regulations barring us from expressing any opinions, we must have a right to express our opinions and if our opinions are accepted well and good, but if they are not accepted then we are not going to revolt. This House merely seeks to make a recommendation and that recommendation does not prevent the Constituent Assembly from framing any laws or passing any constitution. Our duty is only to make recommendations and if we are helpless even in the matter of making recommendations, what earthly use can there be of this House existing. My hon. Friend, Mr. Muthuranga Mudaliyar may say, in spite of the fact that he is still sitting in this House, that this House is not needed. Of course many people may agree with him, but our own representatives in the Constituent Assembly wanted this House. We are sitting here and if we ourselves do not want this House and if we look down upon this House and say it is of no use, then I implore the members of this House to quit this place because they do not want this Chamber. Let there be only one Chamber in this province, but so long as we are sitting in this House I feel we are bound to honour it and assert ourselves by saying that there is need for our recommendation whether that recommendation is accepted or not.

Then, Sir, my Hon. Friend, Dr. Subbarayan said, we must have enough independence and we have got enough independence to do what we want. I do not know how the assertion can be correct if we are not in a position to make recommendations, not even to suggest, from this august and hon. House, that the draft Constitution should only be shown to us and that we, as loyal subjects of the State, are prepared only to offer our suggestions to the Constituent Assembly, in order that the Constituent Assembly may enhance its prestige in the world, then I think we have not got that independence which my Hon. Friend, Dr. Subbarayan, claims that we have. We simply want a little bit of independence, which will not in any way be derogatory to the powers of the Constituent Assembly or the powers of the Central Government. Let there be any amount of power vested in the Central Government. We only want that we should give expression to what we feel and how the world will look at the manner in which you tackle these problems. Many things have been said which I feel are not relevant to the resolution before us but if we want Sir really to contribute to the peace of the world if we in India want this to be a great Union of which I am proud to be a subject, and if this Indian Union wants to enhance its prestige and wants to be the leader in Asiatic countries, if it really wants to be the torchbearer of that message of peace which we have always been advocating, if we really want that the non-violence of Mahatma Gandhi, the message that the great leader has been preaching should be spread throughout the world, and people should think that here is a nation which is non-violent, here is a nation which is democratic, here is a nation which does not like to curtail the opportunities and liberties of its citizens. I say Sir that at least this ordinary liberty, this ordinary privilege

12-45
p.m.

[Abdul Latif Farookhi Sahib Bahadur] [17th December 1947]

of making this recommendation to the Constituent Assembly should be given to the members of this as well as the other Houses of Provincial Legislatures in the Indian Union. I do not think that this resolution seeks to do anything more than that. This resolution does not infringe upon the rights of the Constituent Assembly, it does not say it should do this and it should do that. We are only making a suggestion. We simply say that before a decision is arrived at, that before the constitution is adopted, it must be circulated to the provincial legislatures for the opinion of the members of the Legislatures and I do not know, Sir, why this procedure has not been adopted. Anyhow, Sir, I think there is a strong case for expressing our opinion, the opinion of this House to the Constituent Assembly and if the Constituent Assembly adopts that, it is well and good. (As elder Statesmen, I would tell my hon. friends who are there as elder statesmen that they will agree with me that we will not make any suggestions which will be in any way derogatory to the powers of the Central Government or the Constituent Assembly. We shall only make such suggestions—and particularly I would say my hon. friend, Dr. Lakshmanaswami Mudaliyar, is a very cautious gentleman and he would not Sir, and nobody would expect him to make suggestions which would be revolutionary—as will be very moderate and very reasonable and they will be accepted by the whole world, I can say Sir; and if the Congress party in power simply rides roughshod over the views of this House and defeats this resolution, I would say, Sir, 'God save us from our friends.' ”

* K. UPPI SAHIB BAHADUR:—“ Mr. President, the resolution as it stands is a very very moderate resolution. It is not a party question. It is a very very moderate and very reasonable resolution. It only expresses to convey to the Constituent Assembly that it is our desire that the Provincial Legislatures be given an opportunity to express their views on the draft constitution before it is adopted. Sir, we are interested and we hope the other side of the House will also be interested to express its opinion on a very very vital matter like this. It is a matter of ordinary occurrence in this House and in the legislatures of all provinces to move for the circulation of a Bill. We claim, Sir, we are the representatives of the people and motions in this House as also in the other House are often made that a Bill be circulated for public opinion and it is an usual routine sort of work in the Legislatures to call for opinion of interested parties in spite of the fact that the representatives of the people, the accredited representatives of the people are enacting such Bills. At the Select Committee stage we call associations and individuals to give opinion and views about the matter under discussion. Even this Government when the other day introduced the Sales Tax Bill called for representations of the people so that the people may have confidence in the Government. They summoned the representatives of several associations and other interests to give expression to their opinions on the Bill. So also in spite of the fact that we have sent our representatives and it is

17th December 1947] [K. Uppi Sahib Bahadur]

our representatives that have approved the Bill we ask the Constituent Assembly to send the draft of the Bill to us for our opinion because it is a vital matter for the whole of India, including the provinces. These are very very vital matters in which really the provinces would be interested because it will be more or less a life and death affair for the provinces later on. Under the circumstances is it unreasonable for us to ask to convey to the Constituent Assembly to send us their draft Bill and give us an opportunity to give our opinion? It is up to them to accept it or not. Still why the Government is opposing this demand I do not understand. Sir, Dr. John was saying that we will be sitting in judgment on our representatives in the Constituent Assembly. The resolution only says that the draft constitution before it is adopted should only be sent to us and not the constitution itself. We are not sitting in judgment on the Constituent Assembly. We want only the draft to express our opinion on it. Our resolution does not make any drastic demands. We only ask for an opportunity to express our opinion. Under the circumstances it is not reasonable for the Government to oppose this. I say Sir, this Government is now a Congress Government. There are ever so many political parties in the country and some of them are growing strong. We do not know who will be in power in the years to come. There may be a hitch between the Centre and the Provinces under those circumstances. If we are given an opportunity we can at least point out to them difficulties that might crop up in the future. Nobody is against a strong Centre. Every one of us wants a strong Centre so that we might hold a first-rate position in the comity of nations. It is a matter of pride that even now our Prime Minister is making the way for a prominent place for our country in the comity of nations. I therefore commend to the Government to accept this resolution and to convey this message to the Constituent Assembly. They may accept it or not. That is a different matter. There is no harm in conveying to the Constituent Assembly our wishes. It is a very reasonable desire and I commend it to the Government, Sir."

* DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—“ It is with considerable diffidence that I rise today to offer a few remarks on the many points that have been raised during the course of this debate; for I realize that the atmosphere in this House to-day is entirely different from what it was when I had the liberty through your kindness to move this resolution. I do not know what has caused this change of atmosphere nor am I anxious to go into the reasons which might have animated some of the members of this House into this atmosphere. For myself, I have no regrets for having given notice of this resolution for I can assure the hon. members that my object was the same as that of the others that it was for the framing of a constitution about which we all will be proud, a constitution that will show that India has occupied a place in the international world second to none and a constitution that will stand the tests of time and worthy of a great nation. Many points have been raised in the course of the debate which unfortunately do not seem to be relevant for the consideration of the resolution itself. I have been taken to task by my hon. friend Dr. V. K. John, for having expressed many-aside remarks but I am surprised,

[Dr. Sir A. Lakshmanaswami Mudaliar] [17th December 1947]

Sir, shrewd lawyer and Advocate as he is, that he should take note of these aside remarks which are often met with in judgments and more often in the illogical arguments that are advanced in Courts of law and make a point that I had been doing this or that. It would be a very weak case if irrelevant considerations are given and it would be on the face of it absurd.

" In my personal opinion it would have been better if this consideration of framing a constitution had been deferred to a later date. Let this not be taken as in any way detracting from the purpose of this resolution. On the other hand, Sir, I may remind you and the hon. Members of this House that it is exactly three months today since I first had the liberty and privilege to move this resolution. Sir, the 17th of the month seems to be a fateful day. Indeed it was on the 17th September that I got leave of the House to move this resolution and these three months have been taken for a non-official resolution to be debated in this House. Is it my fault Sir? I do not want to complain about it, but I feel sure that if there was any reasonable spirit of trying to help a non-official resolution to be shepherded through this House a date could have been allotted much earlier than this for this resolution. Hon. Members now say that I am trying to arrest the progress of the Constituent Assembly and that it will take time and therefore as time is the essence of the whole constitution-making, this is not opportune.

1 p.m. " May I suggest to them that if the Government had only followed the usual principles which are adopted in every Legislative Assembly of giving non-official days when they ought to be given, this resolution would have been passed by the end of September and there would have been more than ample opportunity for the Constituent Assembly to have considered this resolution and to have come to such decision as they considered proper. Let me remind hon. Members that while at one time we thought the constitution making would have been over by the end of November, December or early in the New Year, we are now told that the Constituent Assembly is not likely to meet till after the Budget session, that is somewhere in April and possibly—I am not prophesying it—constitution framing itself will not be over till about the autumn of the year 1948. The argument, therefore, that time is against the acceptance of this resolution cannot hold water and there must be something more substantial than that for the hon. Members' wish to oppose the resolution.

" The argument has been advanced that this resolution somehow or other is a reflection upon the members of the Constituent Assembly, that they are the elected representatives and are distinguished members of that body who can take part in its discussion and who are quite capable of looking after the future constitution and giving us a good constitution worthy of India; I have no doubt about it at all. I think it is really trying to raise the red herring across the scent for hon. Members to say that this resolution reflects in any manner on the capacity of the representatives that are now present in the Constituent Assembly and that thereby we shall be doing

17th December 1947] [Dr. Sir A. Lakshmanaswami Mudaliyar]

them a disservice by asking that the draft constitution should be submitted to this House. May I bring to your notice that it was not this Council that first suggested that the draft constitution should be sent to the Provincial Legislatures; it was they themselves that agreed to this. May I invite your attention to Rule 63 framed under the rules of the Constituent Assembly regarding the consideration of the draft constitution :—

‘ The Assembly before finally settling the Union Constitution should give an opportunity to the several provinces and States through their Legislature to formulate within such time as it may fix, their views upon the resolution of the Assembly in outlining the main features of the constitution.’

and again they said :

‘ Before the constitution of any province is finally settled

Mark the words ‘ before the constitution of any province is settled ’ and it runs :

‘ or the decision to set up a group constitution for the section in which the province is included is finally taken, an opportunity shall be given to the province concerned through its Legislature to formulate, within such time as may be fixed for the purpose its views ’

This resolution, Sir, was not a reflection upon the character and the capacity of members of the Constituent Assembly at the time when it was framed; and it is extremely unreasonable on the part of any member to throw that challenge to me and to prove that I am trying to show that there is no sufficient talent in the members of the Constituent Assembly to look after the framing of the constitution. Now, Sir, let us come to grips with the problem. This is a Constituent Assembly started similar to those that have been adopted in the past in various other countries and if that were so, historical precedents no less than other considerations should weigh with the members of the Constituent Assembly in the task that lies ahead of them. As I tried to show on the previous occasion, Constituent Assemblies were formed after a great deal of fight and after a great deal of struggle. Here also the struggle continued; it was a war, a non-violent war if you will like to call it so—between the British on the one hand and the people of India on the other; the people of India won and they said : ‘ We shall have a constitution framed by a Constituent Assembly which will suit the genius of the people and a constitution of which we shall be proud.’ Well and good; if this consideration holds good, is it not logical to look to the other background, the historical background and see what other countries did? In Canada some sort of fight took place between the French settlers and the British settlers; the same fight took place in South Africa and things were no different in the United States of America and what did they do? In every one of these constituent assemblies, as I tried to make it clear on the previous

[Dr. Sir A. Lakshmanaswamy Mudaliyar] [17th December 1947]

occasion, the draft constitution was sent to the various provinces and Governments and their views were invited so that the constituent assembly may have their views before them and give their final judgment. I am surprised that any hon. gentleman of the Legislative Council or Assembly and more so a Member of Government should get up and say that this is not correct and we should not interfere with the Constituent Assembly and we should let them take their own course. Let me, in this connection, refer to a small incident that took place when the Canadian Constitution was being framed. There is a very small island, the Prince Edward Island, which has a population of about 10,000. I do not think it will be a reflection if I say most hon. members may not know its geographical location; I myself know it because it put up a fight with the Medical Council of Great Britain. This Prince Edward Island made it clear through its representatives that it was not prepared to continue in the Assembly if certain demands were not granted; according to the constitution as framed, it could have only five representatives and so it represented to the Constituent Assembly: 'If that is so, we will keep out of the Constituent Assembly and the Assembly went out of its way to consult the Legislature and make certain advances and finally reconciled the two view points so that the Prince Edward Island came within the Constitution and is a happy and loyal unit of that Constitution. There is no reason to believe that any of the units of the present Union will take such a hostile attitude. I am merely pointing out the case of Prince Edward Island to make the House aware that Constituent Assemblies in every country in the world where they were set up took the view that it is not only their business when framing a constitution to so frame it that it can go hand-in-hand with all the Provinces of the Union and that ultimately their goodwill more than any other statutory provision will be the deciding factor to constitute what my Friend has been pleased to call a strong Centre. After all is said and done, what is it that we are seeking this Legislature to do? It does not commit the Government and certainly it does not commit the Constituent Assembly to any course of action. What we desire is that we should have a frame-work of the future constitution, which will be presented to the Constituent Assembly sent to us for our opinion. Hon. members have said that representatives of this Province are there in the Constituent Assembly. May I respectfully submit that though the representatives of this Province are there, representatives of this Government are not in the Constituent Assembly as a Government—I shall be corrected by the Hon. Leader of the House, if I am wrong—individuals have been selected and the procedure that has been adopted also requires some little consideration; I do not comment upon it and I certainly do not propose to say whether it is correct procedure or not but it is a fact that certain of the representatives were necessarily called in for conferences and consultations as a body and certain others could not attend. Also much of the proceedings of the Assembly were held in camera. The first resolution that was

17th December 1947] [Dr. Sir A. Lakshmanaswamy Mudaliyar]

moved in the Assembly was that the proceedings should be in public so that everybody may know the arguments that were advanced for or against any particular view point. Again much of the discussions was more or less carried on in a confidential atmosphere; it could have very good repercussions indeed, I do not question that but the fact remains. If you care to look at the manner of voting in those Constituent Assemblies, you will find that in several of these Assemblies, the unit gave the vote whatever may have been the representation of particular provinces; it was not the individual votes that counted. But in the Constituent Assembly, the manner of voting was left to individual members with an occasional directive on the manner of voting. But the voting was entirely for individual members so that it is quite likely, and I know it has happened, that while a majority of the members of a province took one view, the minority took one view and their view was supported by the Assembly in general. Because anybody could say that this is not representative opinion of Madras or Bombay or the Central Provinces, it seems to me that the only method of getting a satisfactory solution of this question of constitution-making is by taking everybody into confidence, more particularly the legislatures of the various Provinces.

" My hon. Friend Sri Narayana Menon suggested that the draft constitution is there and it is open to any individual member to send up his petition. We have been accustomed through the long inglorious British rule in this country to petitions. I thought that after the 15th August petitions would be rather out of date, that we shall ask for what we want and place our views and leave the final decision to the authorities concerned.

" A great deal has been made about a strong centre. I said it on the last occasion and I repeat it again that I am for a strong centre but I know perfectly well that the strong centre shall gain its strength to the extent to which it takes into confidence all the provinces and to the extent to which it is in a position to get the provinces to take a very sympathetic, a very loyal and a very considered view of the whole question. Strength to-day is not the strength of forces; it is not the strength of might as against right; it is the strength born of that feeling that in unity we shall stand and in discord we shall be ruining ourselves and future generation. This constitution is a constitution framed for a nation and not for a party, it is a constitution framed for the future and not just for the immediate purpose of having a constitution and it is with that overwhelming sense of duty that I venture to bring forward this resolution before the House; that an opportunity should be given to the House to express an opinion.

" People ask what will be the good of this opportunity; you may vote but you may find the majority voting against it; it is not a question of the minority voting for, or one being always in perpetual minority in this House; it is not the voting strength that I depend upon in this House; but if there are any arguments of

[Dr. Sir A. Lakshmanaswamy Mudaliyar] [17th December 1947]

value, if there are reasons adduced and any promises are given; then I feel that members of the Constituent Assembly would have an opportunity of knowing what they are. It is not the decision of the House that matters but the Assembly will know the discussions on which the decision of the House was taken. Even now I know my resolution is fore-doomed more or less to defeat in spite of the fact that the Hon. Leader of the House gave on the last occasion an express assurance that every member was free to vote as he chose. Yet, I know that this resolution is fore-doomed to defeat. But I say my object is served still because I propose to press this matter and although it is defeated as it is surely going to be, the proceedings of the House and the debate will be before every member of the Constituent Assembly.

"I beg of the Government even at this late stage to re-consider their attitude and to take it that my object in moving this resolution is not at all to cast any reflection on any member of the Constituent Assembly least of all on the great leaders who are trying to do a most difficult task at a time of grave emergency but rather to help them to further the object that we all have at heart and that is a constitution that will be to the acceptance of all people; and that will give us a satisfaction that we all have been counted as voicing our views and giving our opinion in shaping it.

"My Hon. Friend referred to the fact that he did not want the Legislative Council but only the Legislative Assembly; that expression of opinion, I am sure, will go a long way for those who wish it be so and I have no view on that matter one way or the other. Left to myself I do not know why the Legislative Council is not doing as much good work as it might have been expected to do. But revelation comes to us with experience and we stand corrected in the light of such experience.

"My only object is that those who are trying to frame the constitution in a most difficult period of history will certainly feel that their hands are strengthened rather than weakened if they send the draft constitution to the various provinces for their views. To the people who are very keen on time, I say that if this draft-constitution Bill can be sent during the Budget session, every legislative body in this and other provinces can easily find a day to discuss this draft Bill and by the time the Constituent Assembly meets in April next, they will have the opinion of all the Legislatures. I even go to the extent of saying that they may fix a date for that so that there may not be any dilatory tactics. I feel I have tried as far as possible to reasonably meet all the difficulties, and if in spite of this, this resolution does not find support from the Treasury Benches I can only say it is a misfortune for me and for this House."

1-15
p.m.

* THE HON. DR. T. S. S. RAJAN :—"Mr. President, Sir, I am very thankful to the Hon. Dr. Lakshmanaswami Mudaliyar for the very lucid way in which he presented his case to this House.

17th December 1947] [Dr. T. S. S. Rajan]

It is rather too late in the day to traverse all the facts and arguments put forward on these two occasions, and it is not my desire to argue out the several points made during the discussion. I just want to tell you only one or two things. I just want to bring to the notice of the House one point, and that is, that this constituent assembly is a sovereign body. We have elected that sovereign body to enact a constitution for us and to it we have sent our members. It is not as if they were sent there casually or with no suggestions whatsoever. That they have been parties in politics in this part of the province is certain. In a political struggle of the sort we have conducted in our country and in which we have come out successful it cannot be denied that the party that played the biggest part, the party that made the greatest sacrifice, the party that stood through this struggle and faced suffering is certainly the party that must have the greatest share in settling the national affairs and particularly in such affairs as are sequel to the fight that was put forward. If under these circumstances it so happens that a particular party has got the upper hand it cannot be helped. It is, it may be the only voice: because it is the only voice that deserves to be heard and recorded. Therefore it is not as if that that should not be heard and that people should complain about it. The party that has come out successful after a political struggle in all countries of the world has the strongest claim to say in this matter. It does not mean that others ought not to have a voice in the matter. When the constitution of the Constituent Assembly was framed it was in such a manner that the maximum amount of popular opinion should be represented in that body. It was also laid down clearly that this Constituent Assembly shall be a sovereign body. If these two factors are kept in mind you would see why the constitution framed by that body should be supported. The principles on which the constitution is to be framed have been approved. It was not in a secret session that those principles were approved of. It was broadly debated, commented upon, and there was a very very able debate, and it was open to the Press. It was not secretly debated. The principles of constitution, as it has been framed, is a public document. It stands to the credit of this nation that it has decided that its constitution shall be a republic. It has to fight against odds, the States, the Princes who claimed preferential treatment, etc. It stands to the credit of the Constituent Assembly that it has laid down the constitution so clearly and so unambiguously as it has done. If sovereign republic is to be the constitution there is no need for any secrecy about its procedure. No doubt during the stage of discussion there had been occasions when they could not have open discussion on account of the very fact that they had to discuss the constitution in which interests had to be represented, and in doing so they had to speak very clearly and candidly, which cannot become public property for the fun of it. Let us understand that the Constituent Assembly has done its work in a most expeditious way, in which no party or no individual was not allowed its or his say. Now why is it

[Dr. T. S. S. Rajan]

[17th December 1947]

asked in this resolution that the Constituent Assembly should again submit its proposal for discussion to this House. It is sovereign in nature.

DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—“ On a point of personal explanation, Sir, I did not say the Constituent Assembly should submit its decision. They have appointed a drafting committee which is to draft the constitution in the form of a bill and which will be before the Constituent Assembly for adoption. I only suggest that this draft constitution may be circulated to this legislature for its opinion.”

THE HON. DR. T. S. S. RAJAN :—“ I was arguing that point only. I was saying this Constituent Assembly is a sovereign body, that it has laid down its principles before the public, and they are now before the nation. It is on those fundamental principles that the constitution is to be framed; in fact those principles are being developed in the constitution. That it is not in a hurry, that it is not doing its work in a nook and corner fashion is shown by the fact that it takes its own time, and the hon. Gentleman himself has said it may be a year before it comes to its final conclusion. We do not want the Constituent Assembly to rush through its work; and even now nobody prevents this House or for the matter of that any other House to convey to the Constituent Assembly through the elected representatives his or their views. Our representatives are there. They are not men of whom we should hang our heads in shame. Various shades of opinion are represented in that body. It stands to the credit of the members there, that due to their generosity and wisdom, we see that the best in our province have gone to the Constituent Assembly. Therefore it is not as if the thing has been done in a pick-and-choose method, or only one party being sent. So it is not as if others are not included; others, in fact, have been included. Therefore the constitution of the Constituent Assembly or the way in which it has been formed cannot by any stretch of imagination be criticised. Once having elected our representatives we should honour, trust and treat them with consideration which they rightly deserve. It is open to our legislature to tell them ‘ we want this thing should be done.’ The constitution is yet to be framed. There is plenty of time for the work to be finished. If we can foresee what it is going to be it does not prevent us to tell our representatives what this legislature wants. Therefore I do not see anything dangerously wrong with regard to the constitution or the procedure that it adopts. It is not as if that this detail that might be given will alter the basic principles of the constitution already framed. If we want to add anything we can send it to our representatives. So unless there are new things I don't see any advantage in passing a resolution of this sort, simply to send us all the Bills for our consideration. The time has come for us to feel that time is the chief factor now and that to-day the political developments are such that we should take a decision unanimously and that we will be jeopardizing if we do not evolve a constitution as early as possible.

17th December 1947] [Dr. T. S. S. Rajan]

Those who have watched with us can see that in Kashmir, in the Nizam's Dominions and so many other States—Mysore, Travancore and the twenty States of Bihar, Central Provinces—for lack of definite formulation of opinion and ability to tackle the situation, the constitution has become so demoralized or weak that in the framing of it we will be deprived of the national strength we require. Therefore, it is almost tantamount to this that this country should settle its constitution as early as possible. What that constitution should be we have already stated what it should become in course of evolution is also stated there. So many things that are happening to-day are added to, in it; whether we should have a voice in the neighbouring States, is something we should think well. A State like Kashmir has to meet four or five nations because of its position; perhaps its position is most strategic and advantageous to India as a whole; on it the country should take a decision unanimously. We cannot have two voices. India has got to be a nation; it has to be an aggressive force; it has to deal with a defiant people outside its borders, people, virile and strong who are not bound down by international law. Any delay in making the decision of the constitution will only mean defeat.

“ So it is not as if there is any objection to the resolution by itself. It is very well intentioned; I am sure the Mover has got the best motives. But to say that the Constituent Assembly should wait and wait till they hear all round, will mean, it will delay the whole procedure affecting the future programme of work in an united India. That should be our prime consideration. Besides I am not at all convinced of the arguments of the Mover with regard to the motives and forces that operated before the Constituent Assembly came into being. Instances may be given of various constitutions; but they are not identical in its application to this country. We have fought in a peculiar way; we have lived in a peculiar way; we have divided and subdivided in different ways; but let us all unite together, frame a constitution and be free, and perhaps that matter may be one of amazement to the world. Constitutional history may not record a history like ours and a success like ours. Therefore if we adopt a particular method or procedure it is because it is in the interests of the nation and for its self-preservation. It does not mean that we should always copy what was done in Canada or the United States or some other parts of the world. We stand here—a body of 300 million people inhabiting 2,000 miles of the length and breadth of the earth and having different cultures, different practices and different ideals, but fundamentally united together. Therefore while I thank the hon. the Mover for the resolution he has brought before the House and the wealth of information he has given on it, I regret I am not able to accept it.”

1-30
p.m.

The resolution of Dr. Sir A. Lakshmanaswami Mudaliyar was put to the House and declared lost. A poll was demanded by Abdul Latif Farookhi Sahib Bahadur and the House divided.

[17th December 1947]

Ayes.

- | | |
|---------------------------------------|---------------------------------------|
| 1 Abdul Latif Farookhi Sahib Bahadur. | 6 Dr. Sir A. Lakshmanaswami Mudaliar. |
| 2 Mrs. M. N. Clubwala. | 7 Sri B. Narayanaswami Nayudu. |
| 3 Mrs. M. Hensman. | 8 " R. Suryanarayana Rao. |
| 4 Sri H. M. Jagannatham. | 9 Dr. Syed Tajuddin Sahib. |
| 5 " Medai Davoi Kumaraswami Mudaliar. | 10 K. Uppi Sahib Bahadur. |

Noes.

- | | |
|----------------------------------|---|
| 1 Sri S. B. Adityan. | 12 The Hon. Dr. T. S. S. Rajan. |
| 2 " B. Bhima Rao. | 13 Sri M. K. Sundararama Iyer. |
| 3 " A. Govindacharulu. | 14 The Hon. Sri O. P. Ramaswami Reddiyar. |
| 4 " S. Jayaram Reddy. | 15 Sri N. Ranga Reddi. |
| 5 " Dr. V. K. John. | 16 " N. Sankara Reddi. |
| 6 The Hon. Sri K. Madhava Menon. | 17 " S. K. Satagopa Mudaliar. |
| 7 Sri K. Manathunamacha Desigar. | 18 " P. R. K. Sarma. |
| 8 " C. N. Muthuranga Mudaliar. | 19 " P. Veerabhadraswami |
| 9 " M. Narayana Menon. | 20 " N. Venkatachalamaji. |
| 10 " Mothey Narayana Rao. | 21 " K. Venkataswami Nayudu. |
| 11 " C. Perumalswami Reddiar. | |

Ayes 10 ; Noes 21 ; Neutral—Nil.

The Resolution was lost.

MR. PRESIDENT :—“ The House will now adjourn for lunch.”

(After lunch—2-35 p.m.)

V.—MOTION FOR PASSING ON TO THE ITEM NEXT IN ORDER IN THE ORDER PAPER.

THE HON. DR. T. S. S. RAJAN :—“ Sir, under Rule 63 which says that a motion may be moved that any meeting or business be adjourned or postponed or that this House pass to the business next in order in the list of business, I move that we pass on to the business next in order in the list of business.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ May I know from the hon. the Leader of the House why he wants this question to be deferred or postponed? ”

THE HON. DR. T. S. S. RAJAN :—“ The whole object of it is to avoid discussion on it. Therefore I have quoted the rule under which I have moved this motion.”

K. UPPI SAHIB BAHADUR :—“ Sir, this is taking away much of our liberty of discussion. In the morning you ruled out the adjournment motion on the ground that this resolution would be taken up now. Now when the resolution comes up, the Government come forward and say that it may be passed over. That I submit, Sir, is not a very healthy policy on the part of the Government.”

MR. PRESIDENT :—“ Will the hon. Member please read Rule 63 and tell me ”

SRI R. SURYANARAYANA RAO :—“ As I am the person most affected by this move, I would like to know from the Government whether they want an adjournment or postponement or whether they want to pass on to the next item, because the Hon. the Leader of the House read the whole of the first portion of the rule.”